

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF

FROM: JOHN R. HAMMOND JR.
DEPUTY ATTORNEY GENERAL

DATE: MARCH 12, 2021

SUBJECT: IN THE MATTER OF THE FORMAL COMPLAINT OF WESTERN AIRCRAFT, INC, AGAINST SUEZ WATER IDAHO, INC.; CASE NO. SUZ-W-21-01.

On January 28, 2021, Western Aircraft, Inc. (“Western”) filed a formal Complaint against Suez Water Idaho, Inc. (“Suez”).

On February 3, 2021, the Commission issued a Summons to Suez directing it to answer the Complaint within 21-days.

On February 24, 2021, Suez filed its Answer.

The issue before the Commission now is how to further process this case.

WESTERN COMPLAINT

Western receives water service from Suez at its existing airplane hangar (“Hangar 1”) on the south side of the Boise Airport. *Complaint* at 1 and 3. Western states it is building a new, larger hangar (“Hangar 0”) that will be separated from Hangar 1 by a “covered breezeway.” *Id.* at 3. Western contends the breezeway is in a former right of way of the abandoned Boeing Street and contains the water main and sewer line from which Hangar 1 receives service. *Id.* at 3-4.

Western claims its maps did not correctly show the water line locations and depths and that the water main and sewer lines under the breezeway are inadequately separated. *Id.* at 4. Western claims it proposed a revised water-connection plan for Hangar 0 that met all Idaho Department of Environmental Quality (“IDEQ”) water, sewer and fire line location, separation and crossing requirements on August 20, 2020. *Id.* Western asserts Suez has unreasonably withheld its approval of Western’s proposal. *Id.* Western also claims it requested “Commission mediation” of its disputes with Suez, through which it received a second proposed water-connection solution

in a September 1, 2020 letter from Commission Staff. *Id.* Western claims Suez also has unreasonably withheld its approval of this second proposal. *Id.*

Western asserts it obtained, at Suez’s suggestion, an IDEQ conditional water line separation variance that would permit the water line to be placed under the breezeway. *Id.* Western alleges Suez then unreasonably withheld its cooperation. *Id.*

Western requests that the Commission order Suez:

1. To allow a temporary water connection to Hangar 0 from the existing Hangar 1 water line pending the final resolution of this matter.
2. To negotiate in good faith with Western by:
 - a. providing the requested comparative cost estimates for different proposals; and either
 - b. approving the revised connection plan; or
 - c. indicating which proposed alternative solution will work without charging excessive costs to Western.
3. To not charge Western excessive, unreasonable and discriminatory fees, nor to bear any costs to upgrade or relocate Suez' own water mains on or adjacent to Western’s rented real property.

Id. at 6-7.

Western states “[a] formal hearing herein is requested, if necessary to seek the relief, obtain water service and avoid the damages described herein. *Id.* at 7.

SUEZ ANSWER

Suez asserts Western wants to place a permanent building with walls—which Western calls the “breezeway”—directly above a water main. *Answer* at 1-2. Suez alleges this would put its water system out of compliance with IDEQ rules. *Id.* at 2; *see also* IDAPA 58.01.08.542.11. Suez asserts it will work with Western to identify solutions, but Western must refrain from construction that will place Suez’s system out of compliance with IDEQ’s rules. *Id.* at 2-3. Suez asserts placing the breezeway on top of the water main would prevent Suez from accessing, maintaining, and repairing the water main, and create the potential for damage to Western’s structure and surrounding structures. *Id.* Suez asserts that the Commission should not order Suez to provide water service if a customer chooses to construct a building that creates these problems. *Id.* at 3.

Suez states it has worked with Western in good faith and will continue to work with Western to ensure Western's proposal complies with applicable rules while allowing Suez sufficient access to maintain and repair its water system. *Id.* at 3 and 11.

Suez also states the Commission should not require it to provide cost estimates for work that Western may or may not need to perform to ensure that Western's proposal complies with the rules. *Id.* at 12.

Suez denies that the August 20, 2020, plan proposed by Western's engineers complies with applicable rules. *Id.* at 13. Suez alleges that Western acknowledged that its proposal does not comply with the rules by requesting a waiver from those rules, which was denied by IDEQ (contrary to Western's assertion that a variance was granted). *Id.*

Suez submits that the Commission should not endorse any particular "proposed alternative solution" to Western's dilemma because IDEQ, not the Commission, interprets and administers the rules of public drinking water systems. *Id.* In addition, doubts the Commission the jurisdiction to endorse a proposed solution that does not comply with IDEQ rules. *Id.* at 13-14. However, if the Commission is inclined to select an alternative, Suez requests that the Commission determine with specificity which party must pay for the components of any proposed water line solution. *Id.* at 14.

Suez stated that Western has not alleged or proven any discriminatory treatment on the part of Suez. *Id.* at 14. Suez asserts developers' plans must comply with IDEQ and other rules and allow Suez to access, repair, and maintain its water system. *Id.* Suez alleges Western is responsible for any costs needed to construct its project, including any costs needed to ensure that its project does not detrimentally impact water service to Western or other customers. *Id.*

Suez also denies that any relief is necessary and proper based on the Complaint. *Id.* at 14. Suez denies that a formal hearing is required or needed in this case. However, Suez would not object to a hearing if the Commission determines one is necessary. *Id.* at 14.

STAFF RECOMMENDATION

Staff does not take a position on whether a hearing is necessary. If the Commission chooses not to hold a hearing it could process this matter by modified procedure, allowing the parties to submit written comments. In either case, Western and Suez have filed detailed pleadings with a number of exhibits.

Whether a hearing or modified procedure is employed by the Commission, Staff recommends that the Commission encourage the parties to hold at least one settlement conference to attempt to resolve their disputes.

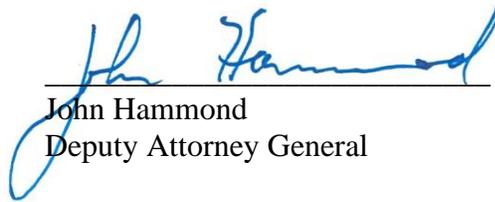
If the Commission decides a hearing is needed, Staff can confer with the parties about a schedule and report that to the Commission. Similarly, if the Commission opts for modified procedure, Staff can confer with the parties about written comment deadlines and report on those.

COMMISSION DECISION

Does the Commission wish to hold a hearing concerning Western's Complaint? If so, does the Commission wish to direct Staff to confer with the parties on a proposed schedule to be submitted to the Commission for review?

If not, does the Commission wish to process the Complaint by modified procedure? If so, does the Commission wish to direct Staff to confer with the parties about proposed comment deadlines to be submitted for Commission review – or - does the Commission wish to set a 21 day comment deadline for Staff and Western followed by a 7 day reply comment deadline for the Company?

Regardless of which procedure the Commission selects, does the Commission also wish to encourage the parties to hold a settlement conference?



John Hammond
Deputy Attorney General